

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephanie Mleczkowski	Team: Squad #15	CCRB Case #: 201411625	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/15/2014 9:30 PM	Location of Incident: § 87(2)(b)	Precinct: 121	18 Mo. SOL 5/15/2016	EO SOL 5/15/2016	
Date/Time CV Reported Sun, 11/16/2014 3:26 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 11/16/2014 3:26 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Genaro Barreiro	00308	950050	121 PCT
2. SGT Michael Dicecco	03303	903799	121 PCT
3. POM Jose Tabora	17232	943856	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Dicecco	Abuse: Sgt. Michael Dicecco stopped § 87(2)(b)	§ 87(2)(b)
B.POM Jose Tabora	Abuse: PO Jose Tabora questioned § 87(2)(b).	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On November 15, 2014 at 9:30 p.m., § 87(2)(b) drove on Bridgetown Road in Staten Island when she saw a black van or sedan, identified via investigation as a police vehicle, speed and make an abrupt stop on Nome Avenue. § 87(2)(b) turned right onto Nome Avenue and then turned left on § 87(2)(b), which is the street she lives on. The black vehicle followed § 87(2)(b) until she pulled over at her home, § 87(2)(b).

As § 87(2)(b) walked up to her house's door, she heard a male voice state, "Hey you, please stop." § 87(2)(b) complied and saw three male officers, identified via investigation as PO Genaro Barreiro, PO Jose Tabora and Sgt. Michael DiCecco of the 121st Precinct, exit the aforementioned vehicle. § 87(2)(b) approached the officers and asked why she was stopped. Sgt. DiCecco replied that they smelled a strong odor of marijuana emanating from her car, which § 87(2)(b) refuted. All of the officers asked for her identification, which she handed to Sgt. DiCecco. Sgt. DiCecco asked her if she was smoking marijuana (**Allegation A**), which she denied.

Sgt. DiCecco asked § 87(2)(b) why the address on her driver's license did not match the residence where she alleged that she lived. As Sgt. DiCecco conducted a visual inspection of § 87(2)(b)'s vehicle, PO Tabora then asked her if she had been smoking marijuana and why the address on her driver's license did not match the residence where she alleged that she lived (**Allegation B**), despite that Sgt. DiCecco had previously asked her these questions. Next, PO Barreiro swiped § 87(2)(b)'s driver's license through a hand-held device.

This case was originally assigned to Investigator Harold Rodriguez; it was reassigned to the undersigned investigator § 87(2)(g) on January 2, 2015.

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation § 87(2)(b)

As of April 3, 2015, which is past the 90-day filing deadline, § 87(2)(b) had not filed a notice of claim in regards to this incident (Board Review 13).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 2).
- Sgt. DiCecco has been a member of the NYPD for 21 years and has had no substantiated CCRB allegations. § 87(2)(g)
- PO Barreiro has been a member of the NYPD for 3 years and has had no substantiated CCRB allegations. § 87(2)(g)
- PO Tabora has been a member of the NYPD for 8 years and has had no substantiated CCRB allegations. § 87(2)(g)

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) drove on Bridgetown Road in Staten Island when she saw a black van or sedan, identified via investigation as a police vehicle, speed and make an abrupt stop on Nome Avenue. § 87(2)(b) turned right onto Nome Avenue and then turned left on § 87(2)(b) which is the street she lives on. The police vehicle followed § 87(2)(b) until she pulled over at her home, § 87(2)(b).
- As § 87(2)(b) walked up to her house's door she heard a male voice yell, "Hey you, please stop." § 87(2)(b) complied and saw three officers behind her on the sidewalk, identified via investigation as PO Genaro Barreiro, PO Jose Tabora and Sgt. Michael DiCecco of the 121st Precinct, exit the black vehicle.
- § 87(2)(b) approached them on the sidewalk and asked why she was stopped. Sgt. DiCecco replied that they smelled a strong odor of marijuana emanating from her vehicle, which § 87(2)(b) refuted. The officers asked for her identification, which she handed to Sgt. DiCecco. Sgt. DiCecco asked her if she was smoking marijuana, which she denied.
- Sgt. DiCecco asked § 87(2)(b) why the address on her driver's license did not match the residence where she alleged that she lived. § 87(2)(b) explained that she was renting her apartment and that the address on the driver's license was her mother's address. Sgt. DiCecco handed the driver's license to PO Barreiro.
- Sgt. DiCecco engaged his flashlight, walked around § 87(2)(b)'s car and looked around it and into the windows. Simultaneously, PO Tabora then asked her if she had been smoking marijuana and why the address on her driver's license did not match the residence where she alleged that she lived, despite that Sgt. DiCecco had previously asked her these questions. § 87(2)(b) replied that she was renting § 87(2)(b) with her fiancé and she reiterated her response that she previously gave to Sgt. DiCecco. At this point, PO Barreiro ran her driver's license through a portable device.
- Sgt. DiCecco asked § 87(2)(b) if she knew § 87(2)(b)" and § 87(2)(b) stated that he was her brother-in-law who had not lived at that location for two years. Sgt. DiCecco asked if she knew where he lived, which she denied. Sgt. DiCecco then asked her if she was § 87(2)(b) § 87(2)(b) which she denied and stated that her driver's license showed her true name.
- Next, Sgt. DiCecco asked § 87(2)(b) "Don't you pay attention to your surroundings?" and elaborated that there had been a lot of rapes in her neighborhood. She replied that she had not heard anything about that and she then rushed into her house and closed the door.
- There were no witnesses of this incident, which lasted for 20 minutes. § 87(2)(b) did not see if the officers completed any paperwork and she was not issued a summons.

NYPD Statements

Subject Officer: SGT. MICHAEL DICECCO (Board Review 7)

- Sgt. DiCecco worked from 7:25 p.m. on November 15, 2014 to 4:09 a.m. on November 16, 2014. He was assigned as the 121st Precinct Anti-Crime Team supervisor, plain clothed and partnered with PO Tabora and PO Barreiro. The officers were assigned to a dark blue Chevrolet Impala.

- Sgt. DiCecco did not document this incident in his memo book and he did not document any entries near the incident time.
- Sgt. DiCecco stated that he typically patrols Mariner's Harbor, Port Richmond and Holland's Lane in Staten Island. Sgt. DiCecco is familiar with § 87(2)(b) in Staten Island; however he could not recall if he was in that vicinity on the date and time of the incident.
- Sgt. DiCecco was provided with a synopsis of the incident; he stated that the incident did not sound like something he was involved in. Sgt. DiCecco was presented with a photograph of § 87(2)(b) and he stated that he did not recognize her.
- Sgt. DiCecco was unsure if PO Barreiro checked any women's driver's licenses for active warrants on the date and time of the incident. Sgt. DiCecco was presented with the NYPD MISD confirmation that PO Barreiro checked § 87(2)(b)'s name for active warrants on the date of the incident; however he stated that this did not refresh his recollection of the incident.

Subject Officer: PO GENARO BARREIRO (Board Review 5)

- PO Barreiro worked from 7:30 p.m. on November 15, 2014 to 4:05 a.m. on November 16, 2014. He was assigned to the 121st Precinct Anti-Crime Team, plain clothed and partnered with Sgt. DiCecco and PO Tabora. The officers were assigned to a dark, blue or black Chevrolet Impala.
- PO Barreiro did not document any memo book entries in regards to this incident, or near the incident time.
- Despite being presented with a photograph of § 87(2)(b) and a synopsis of the incident, PO Barreiro did not recognize her and he did not recall the incident. PO Barreiro also noted that he is not familiar with an individual named § 87(2)(b), who § 87(2)(b) mentioned that the officers questioned her about.
- PO Barreiro could not recall where he was situated on the date and time of the incident. PO Barreiro is not familiar with § 87(2)(b). PO Barreiro is familiar with Nome Avenue; however he could not recall if he was within that vicinity on the date and time of the incident. PO Barreiro is not usually in the vicinity of Nome Avenue, unless he responds to a radio run. PO Barreiro indicated that he typically patrols Port Richmond, which is on the opposite side of Staten Island.
- PO Barreiro is familiar with a portable device, similar to a cellular phone, in which a civilian's name can be checked for active warrants. This device is not assigned to a person or a team and PO Barreiro stated that any officer can take it from the stationhouse during their assigned tour.
- PO Barreiro was presented with the NYPD MISD confirmation which listed that he checked § 87(2)(b)'s name for active warrants on the date of the incident. Based on that information, PO Barreiro stated that it was possible that he checked § 87(2)(b)'s name for active warrants.
- PO Barreiro noted that he has to log his tax registry number into a computer terminal, while at the 121st Precinct, a police car and in the hand-held device in order to check an individual's name for active warrants. PO Barreiro noted that he was unsure if the NYPD MISD documentation referred to him checking an individual's name on a computer at the precinct, within a police car, or via a hand-held device.
- PO Barreiro noted that he has received telephone calls from officers requesting for him to check a civilian's name for active warrants, with which he has complied. However, PO Barreiro could not recall if on the date and time of the incident if any officers called him and requested for him to conduct a warrant check of a civilian.

Subject Officer: PO JOSE TABORA (Board Review 6)

- PO Tabora worked from 7:30 p.m. on November 15, 2014 to 4:05 a.m. on November 16, 2014. He was assigned to the 121st Precinct Anti-Crime Team, plain clothed and partnered with Sgt. Dicecco and PO Tabora. The officers were assigned to an unmarked, dark blue Chevrolet Impala.
- PO Tabora did not document this incident in his memo book. He did not document any memo book entries near the incident time.
- PO Tabora is familiar with § 87(2)(b) and Nome Avenue; he could not recall if he was in that vicinity at the time of the incident. PO Tabora does not usually patrol § 87(2)(b) he usually patrols Operation Impact areas, which are located on the opposite side of Staten Island.
- Despite being presented with a photograph of § 87(2)(b) PO Tabora did not recognize her. PO Tabora was presented with a synopsis of the incident, which he did not recall.
- PO Tabora was presented with the NYPD MISD documentation, which indicated that PO Bareiro checked § 87(2)(b)'s name for active warrants on the date of the incident; he stated that this documentation did not refresh his recollection of the incident. PO Tabora could not recall if PO Bareiro checked any civilians' names for active warrants on the date of the incident.

NYPD Documentation

MISD Confirmation of Warrant Checks

On February 11, 2015, the NYPD's MISD confirmed that on November 15, 2014, PO Genaro Barreiro of the 121st Precinct checked § 87(2)(b)'s name for active warrants (Board Review 11). This document does not list at what time the search was conducted.

November 15, 2014, Tour 3, 121st Precinct Roll Call

The aforementioned documentation notes that Sgt. DiCecco was assigned as the Anti-Crime Supervisor and both PO Tabora and PO Barreiro were assigned to the Anti-Crime Team (Board Review 9). Their memo book entries document that they were assigned to the same vehicle: RMP 301.

121st Precinct's Electronic Stop, Question and Frisk Log

The aforementioned documentation from November 15, 2014 yielded negative results for a Stop, Question and Frisk report completed in connection with this incident (Board Review 12).

Finding and Recommendations

Identification of Subject Officer

§ 87(2)(b) described the first subject officer, identified via investigation as Sgt. DiCecco, as a white man, in his forties, 5'6"- 5'7" tall, with a slim build, wearing black clothes, black pants and possibly wore a baseball cap. § 87(2)(b) added that based on his role in this incident, it seemed like he was the officer in charge. Sgt. DiCecco's NYPD Single Officer Photograph indicates that he is a 5'10" tall, 190-pound, § 87(2)(b)-old white man with black hair and hazel eyes (Board Review 8). The pedigree information noted in Sgt. DiCecco's photograph corresponds to the physical description that § 87(2)(b) provided of this subject officer. Additionally, in a photo array conducted with § 87(2)(b) on April 22, 2015, she confidently identified Sgt. DiCecco as one of the subject officers in this incident.

Despite that § 87(2)(b) did not recognize PO Barreiro during her photo array on April 22, 2015, the preponderance of the evidence indicates that he was one of the subject officers in this incident. § 87(2)(b) described the second subject officer, identified via investigation as PO Barreiro, as a Hispanic man, in his late thirties or early forties, 5'4" tall, with a heavy build, wearing a baseball cap, black jeans and a black jacket. PO Barreiro's NYPD Single Officer Photograph indicates that he is a 5'6" tall, 190-pound, § 87(2)(b) old Hispanic man with black hair and brown eyes (Board Review 8). § 87(2)(b)'s physical description of this officer closely corresponds to the physical characteristics listed in PO Barreiro's photograph. Additionally, § 87(2)(b) alleged that PO Barreiro swiped her driver's license through a hand-held device, identified via investigation as a device used to determine if a civilian has any active warrants, during this incident. The investigation determined that this occurred, and identified PO Barreiro as a subject officer based on the aforementioned information and since the NYPD's MISD division confirmed that PO Barreiro checked § 87(2)(b)'s name for active warrants on the date of the incident (Board Review 11).

Despite that § 87(2)(b) did not recognize PO Tabora during her photo array on April 22, 2015, the preponderance of the evidence indicates that he was one of the subject officers in this incident. § 87(2)(b) described the third subject officer who questioned her, identified via investigation as PO Tabora, as a black man, in his late thirties or forties, 5'10" to 6' tall, with a husky build, a clean cut beard, wearing a shield around his neck (from which § 87(2)(b) did not obtain any identifying information). § 87(2)(b) noted that he wore a black hooded sweater and jacket. PO Tabora's NYPD Single Officer Photograph indicates that he is a 5'11" tall, 230-pound, § 87(2)(b) -old medium skin-toned Hispanic man with black hair and brown eyes (Board Review 8). While PO Tabora's race does not correspond to that of this witness officer, it is possible that § 87(2)(b) mistook PO Tabora for a black man, since the lighting conditions were dark at the time of the incident, 9:30 p.m. The remaining physical characteristics that § 87(2)(b) provided of this subject officer closely correspond to his physical characteristics listed in his photograph.

Sgt. DiCecco, PO Barreiro and PO Tabora were each interviewed and provided with a synopsis of the incident and with the NYPD MISD results regarding PO Barreiro's warrant check of § 87(2)(b). § 87(2)(b) however they did not recall this incident. Despite being presented with a photograph of § 87(2)(b) none of the officers recognized her. None of the aforementioned officers documented any memo book entries at around the time of the incident (Board Review 5, 6 and 7). A Stop, Question and Frisk Report was not completed in regards to this incident (Board Review 12).

The undersigned investigator conducted a photo array with § 87(2)(b) on April 22, 2015, in which she was shown separate photographs of each of the aforementioned officers. § 87(2)(b) confidently identified Sgt. DiCecco as the subject officer; however she did not recognize PO Tabora and PO Barreiro. The descriptions that § 87(2)(b) provided of PO Tabora and PO Barreiro corresponded to their physical characteristics and all of the officers interviewed testified that they were partnered together, which is corroborated by the 121st Precinct, November 15, 2014, Tour 3 roll call. PO Barreiro, PO Tabora and Sgt. DiCecco all stated that they were operating a dark blue or black Chevrolet Impala, which closely corresponds to § 87(2)(b)'s description of the vehicle comprising the officers: a black van or sedan. The NYPD MISD confirmation that PO Barreiro checked § 87(2)(b)'s name for active warrants at the time of the incident, coupled with the fact that her description of this officer closely corresponds to PO

Barreiro's physical features, indicates that § 87(2)(b) interacted with PO Barreiro, who was partnered with PO Tabora and Sgt. DiCecco, during this incident. § 87(2)(g)

Allegations Not Pleaded

While § 87(2)(b) alleged that Sgt. DiCecco asked her if she was smoking marijuana and why the address listed on her driver's license did not match the address where she alleged that she lived, a question allegation is not being pleaded in regards, since this questioning is subsumed in the stop allegation pleaded against Sgt. DiCecco.

Allegation A- Abuse of Authority: Sgt. Michael DiCecco stopped § 87(2)(b)

§ 87(2)(b) alleged that three officers approached and stopped her, after which they asked for her identification, which she handed to Sgt. DiCecco. She alleged that Sgt. DiCecco asked her if she was smoking marijuana, which she denied. She alleged that Sgt. DiCecco then asked her why the address listed on her driver's license did not match the residence where she lived. Then, PO Barreiro allegedly swiped her driver's license through a portable device. Sgt. DiCecco allegedly asked § 87(2)(b) if she knew "§ 87(2)(b)," who she acknowledged is her brother-in-law and if she knew where he lived, which she denied. Finally, Sgt. DiCecco allegedly asked § 87(2)(b) if she was § 87(2)(b) § 87(2)(b) which she denied.

A stop requires reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B- Abuse of Authority: PO Jose Tabora questioned § 87(2)(b)
§ 87(2)(b) alleged that despite that Sgt. DiCecco previously asked her this question, PO Tabora asked her if she was smoking marijuana, which she denied. Again, she alleged that despite that Sgt. DiCecco previously asked her this question, PO Tabora then asked her why the address listed on her driver's license did not match the residence where she lived.

§ 87(2)(g)

An officer cannot ask accusatory questions without founded suspicion of criminality. People v. Hollman, 79 N.Y.2d 181 (1992) (Board Review 16).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(4-b), § 87(2)(g)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
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Reviewer: _____
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